

CHRISTINE (G.M.) & SCATTERGOOD (J.E.)

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THE MEDICAL PROFESSION

VS.

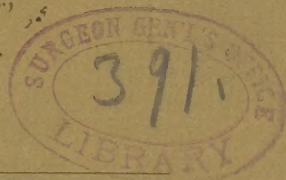
CRIMINAL ABORTION.

Copy of
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presented by the author

THE MEDICAL PROFESSION VS. CRIMINAL ABORTION.

✓
BY G. MAXWELL CHRISTINE, A.M., M.D.

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(With Comments on the Legal Phase of the Question by J. E. SCATTERGOOD, ESQ., of the Philadelphia Bar.)

THE physician should be, and to his credit be it said, he generally is, the conservator of the public health. Co-equal with the advancement in his knowledge of the nature of disease and its treatment, has been from all time his endeavor to increase his information respecting the causes of disease and their prevention.

The physician who does no more than dose his patient with medicine fulfils but a fractional part of his function. But he who goes out on the highways, into public places, and among the dwellings of men, searching out spots where lurk germs of disease, or where they are apt to fall, rest and there abide until an opportune time arrives for their lodgment in the human system, there, under the requisite conditions to develop into disease, such a physician, other things being equal, obeys the injunction placed upon him, not simply to heal the sick, but to keep well the healthy.

No more solemn duty can rest upon man than this; nor, in view of the circumstances, is there one more difficult of fulfilment. Whatever the original sin may have been, that of perversity has been the bane of the human race since the beginning. From Holy Writ and the tongues of wise men have come numerous instructions for the preservation of health; yet people will disregard them to the certain and inevitable injury of the normal bodily condition. It soon became so when history first began to be made; it has been so ever since, and probably will be so to the end. In spite of this, however, man has been preserved, and



whilst there may be grave doubts of the possession by our race of the strength and vigor of former ages, much is being done toward a return to its former pristine condition. But this restorative process is a battle, fortunately presided over by the best of the race. Each one of us must join with watchful eye, willing heart and ready hands in the crusade. The steam engine, telegraph, telephone and other inventions must not stand alone as marking the progress of the nineteenth century. The achievements of sanitation and preventive medicine stand with equal right by the side of any of the causes which make this a progressive age.

The question which confronts us as we coincide in this statement of fact, is, what part do we play in this warfare against disease? or, to indulge in a better simile, in this building up of a defense around and about the race whereby the advance and encroachment of disease can be checked? What physician fails to bear well in mind his double capacity of preventer and curer of disease? I leave the question with each one of my hearers while I try to consider it in one of its numerous phases, namely, as it has to do with the alarming growth in the number of abortions artificially and criminally produced. That the destruction of the human foetus, as a result of the desire not to have children, is on the increase, is patent to the most superficial observer. Whether chastity is becoming less a virtue among single women I cannot aver, but that among this class abortions are now more the habit than formerly can be attested by any physician of much experience.

Even among the married, there are few wives who do not know of some means to destroy the foetus before it comes to full term, and who have not in some manner, and at some time, applied one or more of these means in their own cases. The abortionist plies lucratively his or her trade in nearly every town and hamlet. Moreover, rare is the physician who has not had women from the various grades of the social world appeal to him for his services whereby they can be rid of their "mishap." The single girl thinks of her approaching shame, and the prospective father is apprehensive of the consequences of his guilt; and, without thought of the danger to health, and even to life itself, the unfortunate woman seeks, and too frequently finds, relief from her burden. Both

wives and husbands are too often anxious to get rid of the products of conception, and, regardless of results, make every effort to abort. So frequently is this the case with both single and married women, that it is time our legislatures should give more attention to this increasing evil, that better and more effective safeguards shall be thrown about our women to "protect them from themselves." In proof that the laws respecting abortion are not effective, we need only notice with what publicity abortionists carry on their business. It is a well-known fact that they are rarely indicted and more rarely convicted. The public prints contain advertisements, couched in various terms, of preparations warranted successfully to abort; large drug firms derive immense profit from the manufacture and sale of emmenagogue pills; many retail druggists willingly sell emmenagogue drugs and mixtures, and some physicians are, unfortunately, too apt in prescribing them for abortion. Aside from the morality of the act, and basing our statement on the physical needs of the woman herself, this condition of things is nefarious. Whilst morality alone furnishes sufficiently cogent reasons for the condemnation of the practice of criminal abortion, there are powerful physical reasons against it which should appeal to the judgment of every woman and man.

The operations of nature in the growth and development of the foetus in utero can never be checked or interfered with, unless at the sacrifice of the future health of the uterus or its appendages.

This is a statement that cannot be successfully disputed. Whether produced by medicine internally, by external violence or by operations *per vaginam*, the result is always the production of a sequel never, or rarely ever, overcome. Metritis, subinvolution, salpingitis, ovaritis, peritonitis, retro- and antero-postures of the uterus are some of the results of abortion; and I maintain that one of these, in light or severe form, invariably follows criminal abortion. No matter how carefully applied and observed the treatment after abortion, no woman ever fully recovers the natural tone of her womb. If it be a simple catarrhal endometritis, it is sufficient to produce, in time, an array of symptoms much to be dreaded. It is needless to depict what follows subinvolution, pelvic peritonitis, etc.

If the declaration herein made, that every criminal abor-

tion has its sequel, is not accepted, there can at least be no objection to the statement that a very large percentage of uterine disease is to be attributed to means adopted for either the prevention of pregnancy or the production of abortion. Unquestionably Priestly was correct when he said: "It is necessary to remind wives and mothers that even spontaneous abortion is often more damaging to health than natural parturition, more frequently lays the foundation of disease, and, if repeated, abridges the period of youth and comeliness." This being true of spontaneous abortion, what wonder that the results are a hundred fold greater when the abortion has been secured by violence.

However we view abortion and its results, it behooves our profession to raise its voice in no uncertain tones against the practice now becoming so common. We stand midway between the race and its aggressor—disease. Atlas-like, we bear a world of responsibility on our shoulders, and we must have the moral strength to assume it faithfully and honestly. As the medical educators and advisers of the people, let us point out the evil consequences of abortion; showing how they outweigh in seriousness all the results attendant upon childbirth at full term. Moralizing will frequently fail of its purpose, but an intelligent array of facts from the standpoint of the medical adviser, will, if backed by earnestness of appeal, often dissuade a woman from deliberately jeopardizing her life and health by aborting with intent.

In conversation, a few days ago, with my good friend Dr. W. A. Chandler, a physician of over a quarter of a century's experience in the practice of medicine, he stated as his firm conviction that more than one-half of the human family dies before it is born, and that probably three-fourths of these premature deaths are the direct or indirect result of abortion by intent. Men may differ respecting these figures, but no man can gainsay the general truth thus enunciated.

Does it not awaken within the mind of every thoughtful physician a sense of the consequences which this undoubted state of affairs entails upon woman; of the inroads it makes upon her health; the effect it has in disquieting the peace and comfort of the home circle, and the results it has upon her future progeny?

As a class, Homœopathic physicians have ranked themselves

foremost in opposition to that which defiles and injures the body. Let us maintain this supremacy by not only refusing to lend our aid to those seeking abortion, but also by an earnest endeavor absolutely to check the practice. On the first point we need have no fear; but, as to the second, let me inquire whether a law by which physicians will have to report abortions as they are now required to report pestilential and contagious diseases, would not be efficacious. It seems to me to be a matter of as great a value as any we can consider, and I trust this Society will so regard it. So convinced am I that this Society can take the initiative in a promising movement against the prevalence of abortions, that I have requested my friend J. E. Scattergood, Esq., of the Philadelphia Bar, to consider the subject from the legal standpoint. He has done so in a very able and comprehensive manner, and I now invite your attention to what he has written :

That the procuration, or attempt to procure, abortion is a breach of nature's law is sufficiently attested by the very unnaturalness of the action and its result, as well as by the evident punishment which nature invariably inflicts upon the culprit. The woman who submits her body to such an operation pays the penalty in acute and chronic weakness, disease and disarrangement of her organs, and, possibly, by the forfeiture of her life.

That this operation, when unnecessarily performed, is contrary to human law is clearly set forth in our statute books, where may be found the written law at one time supposed to be sufficiently severe to suppress, if not to eradicate, this crime from the trial lists of our criminal courts.

Outraged nature imposes as her punishment, agony, disease and death—as severe penalties as can be found in her book of punitive justice—but man, in his character of legislator, has seemingly looked with a more lenient eye upon the act, and has either encouraged, ignored, or inflicted a comparatively light sentence upon the abortionist.

That the crime of abortion is horrible, detestable and damnable, need not be said. That some of the worst species of moral leprosy may be directly traced to the door of the abortionist, need hardly be enlarged upon. Away from the guilt of the unnatural

mother and wife, or of her partner, the incontinent, salacious, willing-to-be uxoricide—for he is not worthy the name of husband in its genuine sense—we find in the abortionist the best friend and abettor of weak womankind, or her strong-minded but fast sister, the woman of the town. To his efforts is attributable the fact that women of weak and immoral character can so lightly consider the possibilities of maternity; and to him, too, may we look as the encourager of the seducer, who crawls as a worm into our homes, there to glut his unholy appetite upon the most delicate and fairest fruit of our stately family tree.

Criminal abortion may be defined as the intentional, unnecessary and wrongful destruction of the human foetus *in ventre sa mere*, and, in law, the attempt is as criminal as the accomplishment.

The Criminal Code of the State of Pennsylvania is embodied in an Act of the General Assembly, approved 31st March, 1860, and the law, so far as concerns the subject we are now treating, is found in Sections 87 and 88 (P. L. 404), (see, also, *Purd. Dig. tit. Crimes VI., 3, Abortions, etc.*), and reads as follows:

“SECTION 87. If any person shall unlawfully administer to any woman pregnant or quick with child, any drug, poison or other substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine, not exceeding five hundred dollars, and to undergo an imprisonment by separate or solitary confinement at labor, not exceeding seven years.

“SECTION 88. If any person, with intent to procure the miscarriage of any woman, shall unlawfully administer to her any poison, drug or substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the like intent, such person shall be guilty of felony, and, being thereof convicted, shall be sentenced to pay a fine, not exceeding five hundred dollars, and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years.”

Section 87, as above quoted, is intended to meet the case of the death of a pregnant woman following any criminal attempt to pro-

cure her miscarriage, or the death of the child with which she may be quick. It also meets the case of the death of the woman from drugs administered or instruments applied with the intent to produce abortion; where such woman is not actually pregnant.

Section 88 punishes the administration of drugs or the use of instruments with the intent to procure abortion, although no abortion is actually produced, and although the female survives the operation. See Report on Penal Code, p. 25, where, referring to the latter section, some good man has said: "This section, it is hoped, may tend to put a stop to a crime of too frequent occurrence."

That this hope has not been realized is probably patent to every practicing physician of the State. That it should be realized, and that proper and active measures for its realization should be taken by all reputable physicians, lawyers, clergymen, legislators and officers of the executive department of government, is believed to be the opinion of this assembly.

But how?

We would suggest:

First. By increasing the severity of the existing law.

Second. By enacting such additional laws as are found necessary to insure the detection of the crime and the conviction of the criminals.

At present, the most aggravated case of abortion, with death resulting, has for a maximum punishment the payment of a fine of \$500 and imprisonment by solitary confinement at labor for seven years, which term, by good conduct and obedience to prison rules, may be shortened by about five months. Experience indicates that this sentence is not sufficiently severe.

A few words at this time, devoted to a rough comparison of the maximum punishment meted out by law for crimes other than abortion, may not be profitless.

The highest and only capital crime known to our law is murder in the first degree. It is generally the wilful, deliberate and premeditated killing of a fellow-man. Murder in the first degree, however, may be committed without deliberation and premeditation, and, in fact, without intention, if the slayer be at the time in the act of perpetrating, or attempting to perpetrate, any one of

four crimes particularly enumerated, viz.: Arson, rape, robbery or burglary. Here the intention is of no consequence, or, rather, is presumed, and conviction of murder in the first degree may be taken, and capital punishment may be inflicted.

Next in importance and degree of punishment is the second offense of murder in the second degree. For the first offense of this nature, the law imposes solitary confinement at labor for the period of twelve years. For the second offense, imprisonment for life.

These crimes, however, are the extremities of wickedness and guilt, and in this connection, it is hoped, require no further consideration, although abortion by intent, as it has been aptly termed, might not be inappropriate as a fifth crime, the perpetration of which resulting in death, to be indictable as murder in the first degree.

For voluntary manslaughter, a fine of \$1000 and imprisonment for twelve years is adjudged, together with security sufficient to insure good behavior during life.

	Fine.	Imprisonment.
For involuntary manslaughter,	\$1,000	2 years.
“ rape,	1,000	15 “
“ kidnapping,	2,000	7 “
“ “ with intent to extort, etc.,	10,000	25 “
“ mayhem,	1,000	5 “
“ perjury,	500	7 “
“ false personation,	1,000	7 “
“ sodomy,	1,000	10 “
“ fortune telling (second offense),	500	5 “
“ common gambler,	500	5 “
“ robbery and assault,	1,000	10 “
“ “ “ threat,	1,000	10 “
“ “ “ menaces,	1,000	5 “
“ “ of bank,	10,000	20 “
“ stealing horse,	500	10 “
“ burglary,	1,000	10 “
“ arson (building empty),	2,000	12 “
“ “ (“ occupied),	4,000	20 “
“ malicious injury to railroad,	10,000	10 “
“ counterfeiting,	1,000	5 “
“ forgery,	1,000	10 “
“ embezzlement,	1,000	6 “

From this table it will be seen, that in twenty-three crimes and

misdemeanors enumerated, leaving out the extremes of murder in the first and second degree, nearly two-thirds have attached to them heavier sentences than has abortion. They are: Voluntary manslaughter, rape, kidnapping, kidnapping with intent to extort, etc., false personation, sodomy, robbery with assault, robbery with threats, robbery of bank, horse stealing, burglary, arson of empty building, arson of occupied building, malicious injury to railroad, and forgery, while about one-third fall on about the same general level; these are: Involuntary manslaughter, mayhem, perjury, fortune-telling (second offense), common gambler, robbery with menaces, counterfeiting and embezzlement.

That abortion is worse than any of these latter crimes, and as bad as many of the former, will hardly be disputed. It would be reasonable, then, to place it in the class of crimes, the heinousness of which merits the greater punishment.

Voluntary manslaughter, in its nature, is more nearly allied to criminal abortion, or its attempt, where death of the woman or child results, than is any other crime; and the punishment for it will hardly be considered too severe for infliction on the abortionist who, with full knowledge of the possible result of his action, deliberately jeopardizes the life of another, and with premeditation and full intention destroys the life of the animate foetus. And here it is proper to say, parenthetically, that legal existence, with all its rights and liabilities, commences at the moment of conception. The child *in ventre sa mere* is clothed with every right of inheritance, possession, protection, etc., as much so as the legal infant just about attaining his majority.

The crime of manslaughter necessarily excludes the hypothesis of deliberate and malicious killing, and excludes all cases where killing takes place in the execution of some unlawful design not involving a deliberate and malicious intention to kill. Whart. *Crim. Law*, Sec. 323.

"Every person convicted of any voluntary manslaughter," says the law, "shall be sentenced to pay a fine, not exceeding one thousand dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, or simple imprisonment, not exceeding twelve years, and, in the discretion of the court, to give security for good behavior during life, or for any less time according to

the nature and enormity of the offence." This is the punishment for a crime, the circumstances of which must negative all evidence of cool depravity of heart, or of wanton cruelty. Surely the crime of the abortionist, where the death of mother or child results, should never be counted less serious, yet at the present day, the penalty for the most aggravated case of abortion is not much more than half so severe as is that for voluntary manslaughter. May we not reasonably consider this comparative leniency as accountable, at least in part, for the hope of the good man heretofore quoted having gone no further toward realization.

But, it may be said, abortions generally do not result in the destruction of life any further than of that of the foetus. Well, laying aside all moralizing and sentiment, if it be possible in dealing with this question, and forgetting for an instant that the foetus is as much entitled to protection of its faint life as is the healthiest and stoutest grown man to his more robust existence, there still remains the risk of the death of the woman, and the certainty of her injury, more or less severe and permanent. As all laws should be preventive as far as possible, and all punishments exemplary, the abortionist must be dealt with so severely as to make him unwilling to accept the chance of punishment for even the largest gains he might acquire from his nefarious trade. So, for the attempt alone, though ineffectual, and both mother and child survive, let his sentence to imprisonment be heavier by at least two years than it is at present, and exact the same bond for his future good conduct.

But, though our Legislature should devote whole sessions to the drafting of laws for the prevention of this crime and the punishment of these criminals, unless some way is found for bringing such cases to the attention of the proper authorities for the purpose of prosecution, little progress in its suppression can be made. At common law, a party is guilty of misprision of felony who stands by during the commission of the felony without endeavoring to prevent it, and who, knowing of its commission, neglects to prosecute the offender: Hawk, P. C., *b.* 1, *c.* 59, S. 2; 1 Hale, P. C., 431-448; and by Sections 5333 and 5390 Revised Statutes of the United States, misprision of treason and misprision of felony are made specifically indictable; but in the administration of the State

laws misprision of felony has become nearly, if not quite, obsolete, dependence being placed almost entirely upon self-interest for bringing criminals to justice. In most instances experience shows this dependence well-placed, but in offenses such as abortion it fails utterly and wofully. The woman, whether principal, accomplice, or victim, will not complain even though she be in mortal agony, and those surrounding her are generally more moved by sympathy for her suffering and shame, than by anger and a desire for justice against the felon.

It is suggested that a general law be passed, making concealment of the crime or failure to prosecute the guilty parties through the proper public channels a misdemeanor, or, as it is under the common law, a misprision of felony, and giving to the informer a large portion of the fine collected. It is also suggested that the State board or local boards of health establish a rule requiring physicians to report, in connection with the mortality returns, all cases coming to their notice where miscarriages or abortions, voluntary or involuntary, are indicated, with provision for the investigation of cases of an uncertain or suspicious character.

Thus, with increased severity of punishment, with a mandate to the law-abiding, a promise of gain to the mercenary, and with an invariable rule, a moral compulsion of all reputable physicians to give information which will lead indirectly toward the punishment of the guilty, we may reasonably consider ourselves as having taken the first and most difficult step in the suppression of a crime beastly, horrible, and murderous; we may congratulate ourselves upon having made a forward movement in our crusade against the infamous Moslems who defile the holy shrine of Motherhood.

But whatever be our action or inaction in this matter, let us not forget that the crime is in our midst, and that, as strugglers for the moral as well as physical advancement of our species, it is our duty to suppress, stamp out, and utterly destroy it wherever found. A letter or verbal statement of facts addressed by any reputable physician to the proper prosecuting authorities will generally result in an investigation and prosecution, and persons so giving information need not be subjected to any unpleasant degree of prominence. A general or organized movement in this direction would undoubtedly result in numerous prosecutions, and in a

short time drive the unworthy practitioners and charlatans from the State. In their absence few cases could be concealed, and we might reasonably hope eventually to make the practice uncommon, if not utterly unknown.

DISCUSSION.

DR. W. B. TRITES heartily endorsed the views and suggestions embodied in this paper, and favored the enactment of laws in accordance therewith.

DR. B. F. BETTS said that reports of such cases should be made as a matter of self-protection to the physician himself. In undertaking the treatment of cases where an abortion has already been procured, the physician lays himself open to a charge of being an abettor of the crime. He always notified the coroner when a case of this kind came under his care. That official should investigate all such cases, but he moves only when death to the woman has resulted. Why he neglected to investigate the other cases, Dr. Betts did not know. It is the duty and should be the practice of every physician to give all possible aid in ferreting out the guilty parties.

